

1 Alan S. Wolf, Bar No. 94665
2 THE WOLF FIRM, A Law Corporation
3 38 Corporate Park
4 Irvine, CA 92606
5 (949) 720-9200 Phone
6 (949) 608-0128 Fax

7 Attorneys for Movant
8 SELECT PORTFOLIO SERVICING, INC.

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**

12
13
14
15
16
17
18 In Re:) CASE: 07-20072-D-13
AERY J. UPTON)) CHAPTER 13
Debtor.)) REF.: ASW-1
)) MOTION FOR RELIEF FROM
)) THE AUTOMATIC STAY AND
)) DECLARATION OF DORY
)) GOEBEL IN SUPPORT
)) THEREON
)) DATE: 01/03/08
)) TIME: 1:00pm
)) CTRM: 34
)) U.S. Bankruptcy Court
)) 501 I Street
)) Sacramento, CA 95814

19
20 The Motion of SELECT PORTFOLIO SERVICING, INC.
21 respectfully shows as follows:
22
23 1. This Court has jurisdiction over this proceeding
24 pursuant to 28 U.S.C. Sections 157 and 1334.
25
26 2. This Motion is brought pursuant to Local Rule 9014-
27 1 (f) (1) (ii) written opposition, if any, to the granting of
the Motion shall be in writing and shall be served on the
moving party and filed with the Clerk by the responding
party at least fourteen (14) days preceding the noticed date

of the hearing. Unless written opposition and supporting evidence are timely filed with the Court, without good cause, no party will be heard in opposition to the Motion at oral argument. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the Motion.

Opposition to the Motion shall be served on counsel for Movant as follows:

THE WOLF FIRM, A Law Corporation
38 Corporate Park
Irvine, CA 92606

3. On January 4, 2007, the Debtor filed a Chapter 7 petition and the Debtor claims an interest in the property which is security for the debt owed to Movant. The case was converted to Chapter 13 on or about April 10, 2007.

4. The Plan was confirmed on August 23, 2007.

5. LAWRENCE J. LOHEIT Trustee is the Chapter 13 Trustee for this case.

6. Movant is, and at all times herein mentioned was a corporation organized and existing under the laws of the United States.

7. Movant holds a Promissory Note secured by a Deed of Trust in the principal sum of \$342,000, with the Note all due and payable on August 1, 2035. The Note and Deed encumber real property commonly known as:

1414 Rice Street, Vallejo, CA 94590 ("Property")
and legally described as set forth in the Deed of Trust,
which is attached to the Declaration of DORY GOEBEL.

1 8. The beneficial interest under the Note and Deed of
2 Trust is currently held by Movant. See Declaration of DORY
3 GOEBEL.

4 9. There was a default under the terms of the Note and
5 Deed of Trust, however, Movant has been unable to record its
6 Notice of Default and Election to Sell.

7 10. The Property is not Debtor's principal residence.

8 11. At the time of the filing of this case, the pre-
9 petition arrearages under the Note and Deed of Trust were
10 approximately \$8,377.95.

12 12. Since the time of the filing of the instant case,
13 and as of November 20, 2007, the Debtor has failed to tender
14 3 of the post-petition payments which have fallen due. In
15 fact, under the terms of the Chapter 13 Plan the Debtor has
16 failed to tender the September 1, 2007 through November 1,
17 2007 post-petition payments. Further monthly payments in
18 the amount of \$2537.37 and late charges in the amount of
19 \$104.73 will continue to accrue.

20 13. Pursuant to Local Rule 4001-1(d) (ii), on November
21 20, 2007, The Wolf Firm notified W. Scott de Bie, attorney
22 for Debtor, of the post-petition delinquency incurred by the
23 Debtor. True and correct copies of the facsimile
24 transmission and the confirmation sheet are attached hereto
25 as Exhibit "1" and incorporated herein by reference.

26 14. The total amount due under Movant's Note and Deed
27 of Trust as of November 20, 2007, exclusive of post-petition
28 attorneys fees and costs, was approximately \$349,511.90.

1 15. The Property is also encumbered by additional
2 liens and arrearages which, when added to Movant's lien and
3 arrearages, total approximately \$363,885.42.

4 16. The fair market value of the Property is
5 approximately \$377,664.00.

6 17. The Debtor has no reasonable prospect for
7 reorganization and the Property is not necessary for an
8 effective reorganization.

9 18. Movant does not have, and has not been offered,
10 adequate protection for its interest in the Property and the
11 passage of time will result in irreparable injury to
12 Movant's interest in the Property including, but not limited
13 to, loss of interest and opportunity.

14 19. For all the reasons set forth herein, there is
15 cause for relief from stay including, but not limited to,
16 lack of adequate protection and the Debtor's failure to make
17 the required Deed of Trust payments.

18 WHEREFORE, Movant prays for the judgment against
19 Respondents as follows:

20 (1) That the automatic stay be terminated so that
21 Movant may exercise or cause to be exercised any and all
22 rights under its Note and/or Deed of Trust and any and all
23 rights after the foreclosure sale, including, but not
24 limited to, the right to consummate foreclosure proceedings
25 on the property and the right to proceed in unlawful
26 detainer;

(2) For reasonable attorneys' fees as a secured claim under 11 U.S.C. Section 506(b);

(3) For the waiver of the 10 day stay pursuant to
Bankruptcy Rule 4001(a)(3).

(4) For such other and further relief as the Court deems just and proper.

Dated: November 27, 2007

/s/ Alan Steven Wolf
ALAN STEVEN WOLF
Attorneys for Movant
SELECT PORTFOLIO SERVICING, INC.

EXHIBIT 1

FAX

Date: November 20, 2007 **Pages with Cover Sheet:** 1

To: **W. Scott de Bie** **Company:**

Fax No.: **(916) 442-3126** **Phone No.:** (916) 442-4545

Case No.: 07-20072 **E-Mail:**

Re: Upton, Aery J. **CC:**

1414 Rice Street, Vallejo, CA 94590. Solano County.

From: Jeany Lee **File No.:** 6401-4464

If there are any problems in this transmission, please contact: Jeany Lee at (949) 720-9200 x122

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Comments:

This office represents SELECT PORTFOLIO SERVICING, INC. in the above referenced matter.

SELECT PORTFOLIO SERVICING, INC. has advised us that the Debtors are post-petition delinquent in the amount of \$6,381.30. If this amount is not immediately tendered, we will proceed with the filing of a Motion for Relief from Stay. Thank you.

IMPORTANT -- PRIVATE COMMUNICATION TO DESIGNATED RECIPIENT ONLY:

This message is intended only for the use of the individual to whom it is addressed, and contains information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any unauthorized disclosure, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal Service. THE WOLF FIRM will reimburse you for all reasonable expenses incurred; including postage, to return said documents.

 *** TX REPORT ***

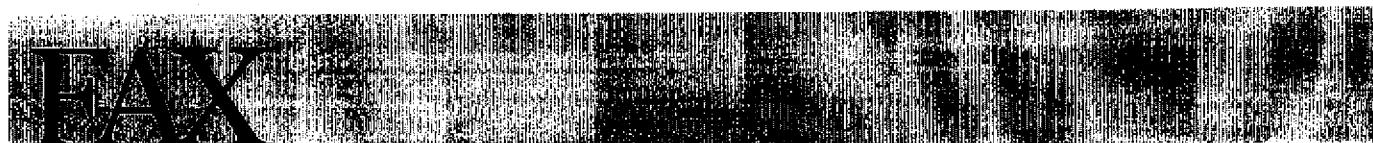
TRANSMISSION OK

TX/RX NO 0332
 RECIPIENT ADDRESS 19164423126
 DESTINATION ID
 ST. TIME 11/20 07:04
 TIME USE 01 '12
 PAGES SENT 1
 RESULT OK



38 CORPORATE PARK
 IRVINE, CALIFORNIA 92606
 PHONE (949) 720-9200 FAX (949) 608-0128
 WEB: <http://www.wolffirm.com>

E-Mail: jeany.lee@wolffirm.com
 Extension: x122
 Direct Fax: (949) 608-0128



Date:	November 20, 2007	Pages with Cover Sheet:	1
To:	W. Scott de Bie	Company:	
Fax No.:	(916) 442-3126	Phone No.:	(916) 442-4545
Case No.:	07-20072	E-Mail:	
Re:	Upton, Aery J.	CC:	
1414 Rice Street, Vallejo, CA 94590. Solano County.			

From: Jeany Lee **File No.:** 6401-4464

If there are any problems in this transmission, please contact: Jeany Lee at (949) 720-9200 x122

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Comments:

This office represents SELECT PORTFOLIO SERVICING, INC. in the above referenced matter.